HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.19620 of 1999

Dated 9th day of April, 2007

Between:

Chakka Suryanarayana
and three others ..
Petitioners

And

The Govt. of A.P., rep. by its
Principal Secretary, Revenue Dept.,
Secretariat Buildings, Hyderabad
and another ..
Respondents

O R D E R:

This writ petition is filed seeking a mandamus to declare the action of the 1st respondent in issuing G.O.Ms.No.189, dated 9.3.1999, as arbitrary and illegal, and consequently direct the respondents not to interfere with the petitioners' peaceful possession and enjoyment of the land of an extent of 2,307.01 square metres.

The brief facts of the case are that the 1st petitioner and his brothers purchased vacant land of an extent of 2307.01 square metres in T.S.No.6-A, situated at Market Yard, Visakhapatnam by virtue of two registered sale deeds dated 19.5.1980 from M/s.Radhakrishna Vihar and since then they have been in peaceful possession and enjoyment of the land and regularly paying tax to the Government. At the time of transaction, the 1st respondent-Government informed the petitioners that the 2nd respondent, vide his order Nos.3065 and 3066/79, granted approval for sale of the land. Now, the petitioners' grievance is that the 1st respondent issued G.O.Ms.No.189 dated 9.3.1999 withdrawing the exemption granted to the petitioners' land in G.O.Ms.No.837, dated 19.5.1978 and also directed the 2nd respondent to take further necessary action in this regard.

A detailed counter affidavit is filed wherein it is stated that the vendor i.e. M/s.Radhakrishna Vihar rep. by its Managing Partner, Vattikuti Pattibhiram filed a statement on 15.9.1976 under Section 6(1) of the Urban Land (C&R) Act, 1976 (for brevity "the Act") for the property admeasuring 2307.01 square metres and it was numbered as C.C.No.5904/76. After due enquiry, as the competent authority deemed fit, draft statement under Section 8(1) together with notice under Section 8(3) of the Act was issued to the firm on 31.5.1977

determining the firm as surplus land holder of 0.0807 square metres. The draft statement under Section 8(1) together with notice under Section 8(3) was served on the declarant firm on 14.6.1977 inviting its objections if any within 30 days from the date of receipt of the draft statement. The declarant-firm filed an objection petition contending that (i) the declaration pertains to a partnership firm consisting of 18 partners and (ii) that the total extent has to be shared among the partners of the firm as per their respective shares. After due enquiry, orders under Section 8(4) of the Act were passed by the 2nd respondent-Special Officer-cum-Competent Authority in C.C.No.5904/76, dated 13.8.1979 declaring that the declarant-firm is within the ceiling limit on the ground that the firm was in existence prior to the commencement of the Act and as per the partnership deed 18 partners of the firm hold shares in the firm. While the matter stood thus, before finalization of the statement under Section 6(1) of the declarant-firm, the firm filed an application for grant of exemption to the land in question for construction of Cinema Theatre under Section 20(a) of the Act before the 1st respondent-Government, which, in its Memo dated 25.10.1976, communicated the exemption application to the District Collector, Visakhapatnam for enquiry and report. The Collector, Visakhapatnam, submitted proposals to the Government through the Commissioner of Land Reforms & Urban Land Ceiling recommending for grant of exemption. The Government, in G.O.Ms.No.837 dated 19.5.1978 gratned exemption to the land admeasuring 2307.01 square metres for the purpose of starting exhibition of films subject to condition that the land should not be leased out or sold without permission of the Government, and thus, the declarant-firm was declared a non-surplus land holder. Later, the 1st respondent reported to the Government that the original declarant Sri Vattikuti Pattabhuramanna died and his son Sri Subrahmanyam

dishonoured the exempted property to the Proprietor of Sri Rajeswari Cinema Theatre, who in turn, leased out the land to Batra Brothers and the lessee is using it for parking gas tankers and no Cinema Hall has been constructed by the declarant-firm so far. Then, the 2nd respondent recommended the Government for cancellation of exemption orders granted in favour of the declarant-firm. The Government, in its Memo dated 6.7.1998, issued show cause notice to the declarant-firm and directed it as to why G.O.Ms.No.837 dated 19.5.1978 should not be withdrawn for violation of the conditions imposed by the Government and also directed it to file its explanation within 15 days from the date of receipt of the Memo. As the declarant-firm failed to submit explanation even after a lapse of 7 months, the Government issued G.O.Ms.No.189 dated 9.3.1999 proposing to withdraw the exemption orders and directed the 2nd respondent to take further action and send compliance report.

Heard the learned counsel for both the parties.

At the outset, this Court is of the view that G.O.Ms.No.189 dated 9.3.1999 was not preceded with any notice to the petitioners, who purchased the land in question as early as in the year 1980 by virtue of registered sale deeds. On that score, this Court can allow the writ petition and direct the authorities to issue show cause notice to the petitioners and pass appropriate orders, but it is not inclined to do so. The stand taken in the counter is that after due enquiry, orders were passed by the 2nd respondent under Section 8(4) of the Act in C.C.No.5904/76, dated 13.8.1979 declaring that the declarant firm i.e. M/s.Radhakrishna Vihar is within the ceiling limits as the firm was in existence prior to the commencement of the Act and as per the partnership deed, 18 persons of the firm held shares in the firm. When once it is declared that there is no excess land and the vendors of the petitioners are within the ceiling limits, in fact, in my considered view,

V.Pattabhiram should not have filed an application under Section 20(a) of the Act seeking exemption. Of course, as the declarant sought for exemption, the Government issued G.O.Ms.No.837, dated 19.5.1978, granting exemption on certain conditions. In fact, that led to the entire confusion. When once the competent authority applied his mind and gave a finding on 13.8.1979 holding that the vendor V.Pattabhiram has no excess land the question of seeking exemption does not arise, and further, when the land is within the ceiling area, it is always open for the landholder to alienate it. Hence, the proceedings dated 9.3.1999 issued in G.O.Ms. 189, canceling the exemption granted in G.O.Ms.No.837 is hereby set aside.

In the result, the writ petition is allowed setting aside the G.O.Ms.No.189 dated 9.3.1999 issued by the 1st respondent. No costs.

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09.04.2007

bcj